

REMARKS

Claims 43 and 45-81 are currently pending.

The Office Action rejected claims 43, 45-50, 57-60, 62, 63 and 65-81 under 35 U.S.C. § 102 as anticipated by U.S. patent 6,491,931 ("Collin"), claims 43, 59-63, 65 and 69-81 under 35 U.S.C. § 102 as anticipated by U.S. patent 6,726,917 ("Kanji"), and claims 43, 45-50 and 57-81 under 35 U.S.C. § 103 as obvious over Collin and U.S. patent 5,911,974 ("Brieva"). The Office Action also rejected claims 43, 45-50, 59-63, 65 and 69-80 under the judicially created doctrine of obviousness-type double patenting as obvious over the claims in Collin. In view of the following comments, Applicant respectfully requests reconsideration and withdrawal of these rejections.

In Applicant's response filed September 29, 2008, Applicant submitted a Rule 132 declaration demonstrating the difference between the required rigid, substantially rectilinear fibers and the flexible fibers in the applied art.

Submitted currently herewith is another Rule 132 declaration. This new declaration further demonstrates the substantial difference between these two types of fibers.

More specifically, Tab A of the declaration includes diagrams exemplifying the difference between using flexible fibers in a mascara and using rigid, substantially rectilinear fibers in a mascara. As can be seen from these diagrams, flexible fibers and rigid, substantially rectilinear fibers act differently on eyelashes. (Rule 132 declaration, par. 2). The flexible fibers curl owing to their flexible nature, meaning that the eyelashes also curl -- such eyelashes are unattractive, having a curled and non-lengthened appearance. (Rule 132 declaration, par. 2). In contrast, rigid, substantially rectilinear fibers do not curl -- rather,

these fibers remain rigid owing to their rigid nature; when these fibers are applied to eyelashes, the result is an attractive, perceptibly lengthened eyelash. (Rule 132 declaration, par. 2).

Tab B of the Rule 132 declaration contains six pictures of eyelashes to which rigid, substantially rectilinear fibers have been applied, and demonstrates that the rigid fibers provide eyelashes with an attractive, perceptibly lengthened effect, an effect resulting primarily from the fibers being in line with the eyelashes. (Rule 132 declaration, par. 3).

Tab C of the Rule 132 declaration contains four photographs --the top two photographs are of a mascara containing polyimide-amide fibers (Kermel Tech, 3 mm) commercially available from Rhodia applied to false eyelashes, and demonstrates that the rigid Kermel fibers provide eyelashes with an attractive, perceptibly lengthened effect. (Rule 132 declaration, par. 4).

The bottom two photographs of Tab C depict a comparison between a composition containing 1% flexible polyamide fiber and a substantially identical composition containing 1% rigid, substantially rectilinear polyamide fiber. (Rule 132 declaration, par. 5). These photographs clearly demonstrate that the mascara containing flexible fibers results in eyelashes which are curled and unattractive, whereas the mascara containing rigid, substantially rectilinear fibers results in attractive, perceptibly lengthened eyelashes, an effect resulting primarily from the fibers being in line with the eyelashes. (Rule 132 declaration, par. 5).

Given that the fibers in both compositions were polyamide fibers, the difference in lengthening effects observed resulted from the rigidity/flexibility of the fibers, not chemical

differences between the fibers -- thus, rigidity, not chemical nature, of the fibers is an important factor in achieving the observed lengthening effect. (Rule 132 declaration, par. 5).

These vastly different properties resulting from the two types of fibers were surprising and unexpected. (Rule 132 declaration, par. 6). Moreover, the fact that mascaras containing rigid, substantially rectilinear fibers of the present invention provide an attractive, perceptibly lengthened effect to mascaras is commercially significant -- eyelash lengthening is a very desirable property for a mascara product to have: the better the eyelash lengthening properties of a mascara, the more desirable the mascara will be to many consumers. (Rule 132 declaration, par. 8).

The evidence in the concurrently submitted Rule 132 declaration further demonstrates the substantial difference between the required rigid, substantially rectilinear fibers and the flexible fibers in the applied art and, accordingly, also demonstrates that applied art such as Collin, Kanji and Brieva neither teaches nor suggests using the required rigid fibers or any benefits associated from using the required fibers. In other words, one skilled in the art, following the applied art, would not be led to using the claimed rigid, substantially rectilinear fibers and, thus, would not be led to the substantial benefits associated with the claimed invention.

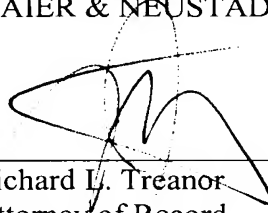
Application No. 10/664,894
Supplemental Response to Office Action dated March 31, 2008

For all of the above reasons as well as all of the reasons in Applicant's September 29, 2008 response, Applicant respectfully requests reconsideration and withdrawal of the pending rejections under 35 U.S.C. §§ 102 and 103.

Applicant believes that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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A handwritten signature in black ink, appearing to be 'Richard L. Treanor', is written over a horizontal line.

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